

**BOARD OF ZONING APPEALS
PUBLIC HEARING
MINUTES
May 21, 2014**

The Board of Zoning Appeals (BZA) held three (3) advertised public hearings in the Council Room of the Vienna Town Hall located at 127 Center Street, South, Vienna, Virginia, on May 21, 2014, beginning at 8:00 PM with George Creed presiding as Chair. The following members were present: Marshall Potter, Greg Haight, Robert Dowler, Robert Petersen and William Harrison. Absent was Donald Chumley. Also attending and representing staff were Gregory M. Hembree, AICP, Director of Planning & Zoning and Emily Goodman, Board Clerk.

Chairman Creed took a moment to go over the procedures of the Board and rights of the applicants which are listed on the back of the agenda.

Item No. 1

Request for approval of a conditional use permit for the establishment of a new telecommunications exchange facility (AT&T – doing business as New Cingular Wireless PCS, LLC) atop the existing Town owned water tower located at 411-413 Tapawingo Rd SW and in the RS-10, Single Family Detached Residential zone; filed by Nathan Campbell, agent for New Cingular Wireless PCS, LLC and on behalf of the Town of Vienna, owner.

Nathan Campbell, agent for New Cingular Wireless PCS, also known as AT&T was sworn in to speak.

Mr. Campbell said the application before them today is for AT&T to add a new telecommunications facility consisting of panel antennas and other related telecommunications equipment to the Tapawingo Road water tower which currently houses telecommunications equipment for two other carriers. There is to be a generator included which will only function in emergency. The antennas will be painted to match the color of the tank as are the others. The equipment shelter will be clad in a fashion to reduce visual impact; they are still working out what that cladding will be. All equipment will be confined within the fenced area and they are proposing some landscaping outside to further reduce visual impact. The facility is necessary to close a hole in AT&T service in residential areas in Town. It is a part of several proposed telecommunications facilities designed to deliver seamless in home wireless service.

Chairman Creed asked if this site would provide complete coverage in Town and Mr. Campbell said no but if you look at the coverage map provided, it will go a long way towards closing the gaps in residential areas.

Mr. Harrison asked if the Town receives rent for use of the water tower and Mr. Hembree answered yes. The Town receives capital improvement fees and a monthly lease per antenna. Mr. Harrison asked if there would be room for additional antennas after AT&T added theirs and Mr. Campbell said he believes their installation would put the handrail at maximum capacity. There are other methods for mounting antennas though.

Mr. Dowler asked Mr. Campbell to explain the Site Safe document he submitted. Mr. Campbell explained the Site Safe document was an evaluation of radio frequency emissions. It sets forth limits of exposure. Mr. Dowler said he assumes these are proposed numbers and asked if actual measurements are taken once the site is up and running. Mr. Campbell said they can and sometimes do take actual measurements. Usually they find the numbers are lower since the Site Safe report is based on maximum output which is not standard.

Mr. Creed said they are the third organization to install antennas on top of the water tower and asked if the report is cumulative. Mr. Campbell answered yes. The report is based off of not just their operation but their operation in tandem with the others.

Mr. Petersen said he drove by the site but was unable to determine if the other carriers had generators. Mr. Campbell said they do not. Mr. Petersen said his concern is the noise nuisance to the neighbors. He asked Mr. Campbell to give the Board some indication of the decibel level of the generator and how often it will be tested. Mr. Campbell said he does not know the decibel level but the generators are tested twice monthly and can be set to test at certain times so it is not running at 3:00 AM.

Mr. Haight asked why AT&T feels the need for a generator if none of the other carriers have them. Mr. Campbell answered AT&T believes there will soon be regulations requiring carriers to make sure sites function in an emergency. The generator is not unique to this site. It is standard for all new installations.

Mr. Potter asked if the cumulative effect of the antennas would have any effect on residents' TVs, telephones etc. and Mr. Campbell said no. They run on different frequencies.

Mr. Potter asked Mr. Hembree to explain the Federal Communications Council (FCC) regulations regarding the Board's ability to deny a carrier the right to place their antennas. Mr. Hembree explained there is FCC Act of 1996 that stipulates the Board does not have the right to deny the application based on health concerns alone. The FCC set some standards regarding the radio frequency level which is why the Town requires the Site Safe report to make sure those standards are being met. The Board can discuss aesthetics and the generator onsite but cannot deny for health concerns. In the interest of full disclosure he informed the Board the Town does have a generator on site for backup purposes for water. Staff worked with the applicants for close to seven months to ensure the generator was as far as possible from any residence. As far as the decibel level, he is fairly certain it is less than 75 DBA. He knows the issue came at some point and will look through his emails to try to find it.

Chairman Creed noted on the coverage map there is still a section along Park St that will have no coverage. He wondered if they would ever be able to close that hole or if this was the last shot. Mr. Campbell said the maps are their best predictions. If there is a hole, AT&T will try to close it. They have two pending additional sites close to but out of Town. In Town they are constrained by the Town's preferred sites. The goal is always to provide seamless coverage.

Chairman Creed asked Mr. Hembree if the towers along the W&OD trail are still considered a preferred location and Mr. Hembree said yes.

Mr. Dowler said he thought the Fairfax County Parks and Recreation Department said no to the towers. Mr. Hembree said there was an installation approved on the towers along the W&OD trail that was never implemented.

Chairman Creed asked if there was anyone from the audience who would like to speak.

Varsha Chandra, owner of 501 Tapawingo Rd SW, was sworn in to speak.

Ms. Chandra said she has concerns. She understands the FCC Act of 1996 but is still concerned about the decibel level of the generator. She does not see how they can approve the item without knowing the decibel level of the generator. AT&T is proposing 12 new antennas but she wonders how many are there now. The ones that are there now blend but what will it look like with 12 more? The generator is not required now. In the future if the FCC says it is required they can add it at that time. She also would like to know if there are other sites in residential zones. She believes there was an issue with installing one at Thoreau Middle School. How does that cell tower compare to this one in terms of number of panels and level of radiation? She opposes this installation because it will lower property values. Whether it is valid or not, people do fear radiation.

Chairman Creed said he remembers when the Town first started reviewing applications for cell tower installation there was a lot of concern regarding radiation and property values.

Mr. Hembree said, to date, he has never received a complaint regarding the cell towers. To answer Ms. Chandra's question regarding the number of antennas, currently approved for the water tower are 8 antennas for Cricket Communications, 12 for T-Mobile and 12 proposed for AT&T would equal a total of 32. He agrees with Mr. Campbell that there will likely not be room for more. He would be concerned the addition of anymore antennas could break the handrail. Each of these applications goes through the same process, first it is reviewed by the Planning Commission, then approved by the Board of Zoning Appeals and then it has to go through the Board of Architectural Review. As he said before, he is fairly certain the decibel level is at or below 75 DBA. Also, the Town keeps the keys to the water tower so any testing can only be done at approved times. There is also a substantial eight foot fence around the site.

Mr. Dowler said when the cell towers first started coming before the Board there was lots of discussion regarding safety and health but the FCC regulation has tied their hands on that. Since then the Town devised preferred locations to avoid applicants coming in for every vacant piece of land. He asked Mr. Campbell if the generator test is done remotely and Mr. Campbell said he believes it involves a technician visit. Mr. Dowler asked how long the test would take and Mr. Campbell said he is not sure but the average total service visit to test the entire spectrum of equipment does not exceed 45 minutes.

Mr. Hembree said there is a cell site at the Nutley Street water tower which is also in a residential zone, RS-12.5.

Chairman Creed asked if there were any additional questions or comments and as there were none he asked for a motion to close the item.

Mr. Haight made a motion to close the item.

Mr. Potter seconded the motion.

Motion:	Haight
Second:	Potter
Passed:	6-0

Absent: Chumley

Item No. 2

Request for approval of a conditional use permit for the establishment of a family day home for 12 children on property located at 204 Whispering Wind Ct SE and in the RS-10, Single Family Detached Residential zone; filed by Miriam Retamoso, Happy Kids Daycare, operator and property owner.

Andrea Retamoso, daughter of Miriam Retamoso, was sworn in to speak.

Ms. Retamoso said they are before the Board asking approval for a conditional use permit for a home daycare at 204 Whispering Wind Ct SE to increase the maximum number of children in care from 8 to 12. It is an already established, licensed and operating daycare. Miriam Retamoso, the owner and operator, retired from Fairfax County Public Schools after 14 years of teaching Head Start. Ms. Retamoso has 28 years' experience combined caring for children three months to three years. She is currently licensed by both Fairfax County and the Town of Vienna to run a family daycare for up to eight children. Since becoming a daycare provider, Ms. Retamoso has attended numerous training and workshops in topics ranging from infant care to toddlers' development. She is certified in CPR and first aid and is compliant with all Fairfax County regulations. Those who have met and worked with Ms. Retamoso truly value her work. Tab number nine in the binders provided show a series of letters of recommendation from former and current clients. Whispering Wind Ct is a cul-de-sac and Ms. Retamoso has plenty of parking available in front of her house to easily accommodate up to four cars in addition to their garage and driveway which can accommodate an additional four cars. During peak times, no more than two cars are present at the same time and the estimated time it takes parents to pick up or drop off their children is no more than ten minutes. As the street is a cul-de-sac, it is not exposed to heavy traffic. The daycare has been operating for ten years and has never received a complaint from the neighbors. The entire basement, which includes one large bedroom, one small bedroom, two play areas, a kitchen and a bathroom, are dedicated to the daycare. The basement is a walkout which allows parents direct access. There are age appropriate toys, vibrant colors and all safety regulations are met. References are checked for employees and background checks are done. There is currently one fulltime assistant in addition to Ms. Retamoso and if the number of children is increased to 12, she will hire one more. Vienna offers an array of daycare options but many families prefer a family daycare setting. Family daycares offer a home like environment that give the children an opportunity to play with children of mixed ages. Also, the location provides parents with a sense of security knowing the home is just minutes from the police department.

Mr. Potter asked, if the number of children is increased to 12, how many assistants will Ms. Retamoso have and Ms. Retamoso answered two. Mr. Potter asked what the requirements are and Ms. Retamoso said they must have a high school diploma and pass a background check. Mr. Potter asked if they are trained in first aid and CPR and Ms. Retamoso said yes and they also complete 60 hours of workshops yearly as required by Fairfax County.

Mr. Harrison thanked Ms. Retamoso for putting together such a complete application.

Mr. Petersen asked if they have a waitlist and Ms. Retamoso said yes. They currently have six children enrolled with two of their parents expecting which would put them at their current maximum of eight. They also have enough of a waitlist to fill an enrollment of 12.

Chairman Creed said he does not see Ms. Andrea Retamoso listed as an employee and she confirmed that is true. She is her mother's backup. She is certified so she can take her place if her mother is sick or on vacation. Mr. Creed asked the name of the second employee and Ms. Retamoso said Cynthia Melendez. Mr. Creed pointed out that Ms. Melendez's certificate for first aid and CPR is expired and Ms. Retamoso said it has been updated.

Ms. Miriam Retamoso, owner and operator of Happy Kids Daycare, was sworn in to speak.

Ms. Miriam Retamoso said she has the updated first aid and CPR information at home.

Chairman Creed asked what is in the kitchen in their basement and Ms. Andrea Retamoso said a sink, counter, refrigerator but no stove. Chairman Creed noted there was a letter included in the packets from Ms. Retamoso's neighbors saying they have no objection to the application and he wishes to make sure it is included in the record. Chairman Creed asked if there was anyone in the audience who would like to speak on the item.

Mr. Jason Zara of 504 Alma Street SE was sworn in to speak.

Mr. Zara said he strongly supports Ms. Retamoso and Happy Kids Daycare. He is now on his third child enrolled. His family has formed a nice community with current and past Happy Kids Daycare families.

Chairman Creed noted the Planning Commission recommended approval of the conditional use permit with a vote of 6-1.

Mr. Gregory McLaughlin of 205 Whispering Wind Ct SE was sworn in to speak.

Mr. McLaughlin said he lives on the same cul-de-sac as they daycare and has had two grandchildren go through the daycare. He strongly supports Ms. Retamoso. She is a great neighbor and a great caregiver. There has never been any issue with traffic on the street.

Michael Linegang of 2337 Riviera Dr was sworn in to speak.

Mr. Linegang said he has two children enrolled in Happy Kids Daycare. Ms. Retamoso runs a daycare that really builds the community. She holds events at parks and recreation facilities where

all the families get together. Allowing her to have more children also allows her to hire more staff which improves the level of care.

Mr. Potter asked if Ms. Retamoso's existing conditional use permit has stipulations attached and Mr. Hembree said she does not have a conditional use permit. She is allowed to have a maximum of eight children at her home daycare by right with an occupancy permit. She needs the conditional use permit to go beyond eight children.

Chairman Creed asked if there were any additional questions or comments and as there were none he asked for a motion to close the item.

Mr. Harrison made a motion to close the item.

Mr. Haight seconded the motion.

Motion:	Harrison
Second:	Haight
Passed:	6-0

Absent: Chumley

Item No. 3

Request for approval of a variance from the maximum permitted finished lot grade deviation – as specified in Section 18-4 of the Vienna Town Code – for a new dwelling being constructed on property located at 900 Park St SE and in the RS-12.5, Single Family Detached Residential zone; filed by John Talbot, agent for Wetherburne Urban Homes LLC.

Mr. John Talbot of Wetherburne Urban Homes was sworn in to speak.

Chairman Creed asked Mr. Hembree to explain the variance request.

Mr. Hembree said in 2009 he generated a report that had taken three and a half years of time evaluating houses and dirt skirts – when the builder piles dirt on the property and then builds the house on top of it. This is often done so on the back side of the house you have a walk to daylight basement entry. This practice became troubling to Town Council members back in 2006 and 2007 and at the same time Councilmembers started questioning how the Town could know the houses were 35 feet or less in height. Now a staff member goes out with the surveyor to evaluate and ensure height measurement. After evaluating thousands of houses and including several parcels as example, of which the lot in question was one, he came to the determination that 95 percent of the problem with dirt skirts could be solved by creating a limit where the existing grade of the property could only be deviated from by three feet either up or down; beyond that, you would need a variance. To date, there's only been one prior request which was for a basement entry garage on Courthouse Rd SW. In this particular circumstance, Mr. Talbot came to the Town and worked with staff for weeks to see how he could build a home on this property. There is the additional issue of an

underground storm pipe which runs diagonal on the property. They were able to design a home that met all Code requirements; the Town issued a building permit and Wetherburne went forward with the building process. This is where Mr. Talbot needs to take over.

Mr. Talbot said he retained the services of a geotechnical engineer, who he brought with him tonight, and designed the house based on his recommendations. They lowered the roof and added a step or two to the house to try to work within the ordinance in an attempt to raise the basement floor elevation as much as possible to get away from the groundwater condition and the proximity to the existing storm sewer. They weren't happy to do it but knew it was necessary. He has been in the business a long time and has a lot of respect for groundwater. There is not only a groundwater issue but a soil bearing capacity problem which requires a subgrade stone support system. During the process of excavating for the basement subgrade Mr. Talbot received a call from the geotechnician saying there was water coming in, conditions were deteriorating and he was concerned about the ability to be able to support the house properly. He immediately went to observe the site and then went to the Town to see if there was anything that could be done because he needed to lift the basement up. He is not trying to circumvent the building height. The lot bowls down; he is not trying to build up the grade to make the house taller. The geotechnician wanted to raise the basement a couple of feet but he decided to raise it one foot. The one foot is why they are seeking a variance.

Chairman Creed asked if the Board denied the variance what the ramifications would be. Mr. Talbot answered he would be extremely disappointed and would have to do some things that would reduce the sale-ability of the house.

Mr. Harrison asked if he was correct in understanding the foundation had already been raised and Mr. Talbot answered yes. The hole was already open and they did not have the luxury of filling it in. Mr. Harrison said it seems the engineering firm Mr. Talbot hired gave him one answer before they dug but another answer once the hole had been opened. Mr. Talbot said that is true. They designed the house based on the geotechnician's report but once they dug it turned out the situation was worse than anticipated. Mr. Harrison asked what is causing the problem and Mr. Talbot answered there has been a lot of rain and it is no secret that Vienna has a lot of ground water. The problem is not just the ground water though but the soil's ability to support the house. Mr. Harrison said they could raise the basement up but not build the house so high. Mr. Talbot answered the issue isn't with the height of the house but with the relationship between the basement floor and the finished grade of the front of the house and the proximity to the Town's storm drain. There's not a gravity outfall on the property. In the event that there was a flash flood and a problem with the Town's storm facilities, with the grades they have created, it would be pretty close to a gravity outfall over the curb on the low side of the property. If they had gone down the two feet, that would not be the case. That wasn't his primary consideration; his primary consideration was a professional engineer was telling him he was really concerned about the ability to put a house on the lot. Mr. Harrison asked if Mr. Talbot had observed any problems with the drainage of the lot in the recent heavy rains and Mr. Talbot said no.

Mr. Dowler asked about the easement on the property. Mr. Talbot said it runs parallel with the front of the house. Mr. Dowler asked how far it is from the foundation of the house and Mr. Talbot said he thinks the front of the garage is about ten feet from the easement. Mr. Dowler asked if the storm drain is contributing to the water table problem and Mr. Talbot said it could be but he can't say for

sure without exposing the pipe. Mr. Dowler asked how deep down the pipe is and Mr. Talbot said he thinks the top of the pipe is about three feet down.

Mr. Petersen said one of the most troubling issues the Board deals with is runoff. He is concerned with the suggestion by Town staff that the pipe could be a contributing factor to the water problem and he wonders why it hasn't been exposed and investigated. Mr. Talbot said he does not think the pipe is the cause and he's not sure how that would be determined. Mr. Petersen said if staff observed it is possible then it bears investigation. He is concerned with approving something that could later become the problem of the property owner. He asked Mr. Talbot what the height of the ceiling in the basement is and Mr. Talbot said nine feet. Mr. Petersen asked Mr. Talbot if he could lower the ceiling and Mr. Talbot said theoretically yes but once you put in drops for duct work it can become problematic to meet the minimum ceiling height dictated by Building Code of seven feet.

Mr. Potter asked Mr. Talbot what type of soil is on the site and Mr. Talbot asked if he could have the geotechnical engineer answer the question.

Tim Farabaugh of Terra Engineering Services was sworn in to speak.

Mr. Farabaugh said the soil on site is predominantly alluvial. When he looked at the site, he realized the storm sewer was part of a defined drainage wave that existed prior even to the lot being built. He told Mr. Talbot there was the problem not only of groundwater but fill to be taken into consideration as well. It wasn't too much fill, mostly cover focusing on the storm water, but when they opened up for excavation they saw a lot of alluvial soils with variable groundwater conditions. The storm sewer could be a contributing factor but he has seen situations where you can actually see water coming in from the storm sewer and they didn't see that with this lot.

Mr. Potter asked if the soil allows for drainage and Mr. Farrabaugh said what they have created is better than what was there before. Before the soil had a lot of vines in it and held water and they created a mat foundation which is not only good for the new home but creates a path of least resistance to allow water to move from A to Z. Mr. Potter asked if there was any concern of the water freezing in cold weather and Mr. Farrabaugh said no. Mr. Farrabaugh said they were hoping to find a better situation than they did when they opened the hole. What they accomplished by only digging down one foot instead of two is they kept the water in the bottom third of the stone. Mr. Potter asked if the weight of the house could be a factor or cause sinking and Mr. Farrabaugh said no. As a professional engineer he has to be able to sleep at night with the decisions made and he is glad Mr. Talbot took his concerns seriously and didn't dig down deeper. They put in a mat foundation which is not just gravel but a grid system at the bottom of the gravel that acts like reinforcement.

Chairman Creed said looking at the easement it looks like the water comes in from the north. He asked where it goes when it reaches Park Street and Mr. Hembree answered it goes to Southside Park. Chairman Creed asked when the storm drain pipe was installed and Mr. Hembree said he is not sure. The subdivision was platted in 1950. Mr. Talbot said he has a copy of the easement and it is probably at least 50 years old. Chairman Creed asked if the Department of Public Works should be involved and Mr. Hembree said they are aware of the situation. Mr. Talbot has talked with DPW staff and was given the recommendation to raise the house which is how he ended up before the BZA. Mr. Talbot stressed again that he is not trying to circumvent the height restriction rule.

Chairman Creed asked if there were any additional questions or comments and as there were none he asked for a motion to close the item.

Mr. Potter made a motion to close the item.

Mr. Haight seconded the motion.

Motion: Potter
Second: Haight
Passed: 6-0

Absent: Chumley

**BOARD OF ZONING APPEALS
REGULAR MEETING
MINUTES
May 21, 2014**

The Board of Zoning Appeals (BZA) met in regular session to review three (3) advertised public hearings in the Council Room of the Vienna Town Hall located at 127 Center Street, South, Vienna, Virginia, on May 21, 2014, beginning at 8:00 PM with George Creed presiding as Chair. The following members were present: Marshall Potter, Greg Haight, Robert Dowler, Robert Petersen and William Harrison. Absent was Donald Chumley. Also attending and representing staff were Gregory M. Hembree, AICP, Director of Planning & Zoning and Emily Goodman, Board Clerk.

Item No. 1

Request for approval of a conditional use permit for the establishment of a new telecommunications exchange facility (AT&T – doing business as New Cingular Wireless PCS, LLC) atop the existing Town owned water tower located at 411-413 Tapawingo Rd SW and in the RS-10, Single Family Detached Residential zone; filed by Nathan Campbell, agent for New Cingular Wireless PCS, LLC and on behalf of the Town of Vienna, owner.

Mr. Dowler made a motion to approve the request for a conditional use permit for the establishment of a new telecommunications exchange facility atop the existing Town owned water tower located at 411-413 Tapawingo Rd SW with the following conditions: all antennas will be the same color as the water tower and the applicant will maintain the equipment in accordance with the Site Safe compliance report submitted with the application.

Mr. Haight seconded the motion.

Mr. Dowler supported his motion by saying telecommunications towers are a fact of life. The Town has declared this a preferred site. Concerns regarding health and safety have been taken out of their hands by the Federal Telecommunications Act.

Mr. Haight agreed and added the explanation given for the generator makes sense.

Chairman Creed said he supports the need for a generator. Landlines are going away and there is a need for adequate telecommunications coverage.

Motion:	Dowler
Second:	Haight
Passed:	6-0

Absent: Chumley

Item No. 2

Request for approval of a conditional use permit for the establishment of a family day home for 12 children on property located at 204 Whispering Wind Ct SE and in the RS-10, Single Family Detached Residential zone; filed by Miriam Retamoso, Happy Kids Daycare, operator and property owner.

Mr. Potter made a motion to approve the conditional use permit for the establishment of a family day home for 12 children on the property located at 204 Whispering Wind Ct SE.

Mr. Haight seconded the motion.

Mr. Potter supported his motion by saying the applicant is qualified and complies with all regulations. There are no traffic problems and the neighbors are supportive.

Chairman Creed suggested adding something in the motion saying Ms. Retamoso needs to comply with all health and safety regulations of the State and County.

Mr. Dowler suggested setting the hours at 7:00 AM – 6:00 PM.

Mr. Potter wished to change it to 7:00 AM – 7:00 PM.

Both Mr. Potter and Mr. Haight agreed with the additions and none of the Boardmembers had any additional comments so Chairman Creed called for a vote on the motion.

Motion:	Potter
Second:	Haight
Passed:	6-0

Absent: Chumley

Item No. 3

Request for approval of a variance from the maximum permitted finished lot grade deviation – as specified in Section 18-4 of the Vienna Town Code – for a new dwelling being constructed on property located at 900 Park St SE and in the RS-12.5, Single Family Detached Residential zone; filed by John Talbot, agent for Wetherburne Urban Homes LLC.

Mr. Dowler made a motion to approve the request for a variance from the maximum permitted finished lot grade deviation for a new dwelling being constructed at 900 Park St SE provided the maximum height of the home not exceed 35 feet.

Mr. Potter seconded the motion.

Mr. Dowler supported his motion by saying there is certainly a hardship that arises out of the property being the property's former existence was a bowl with substantial water problems. The remedy proposed by the applicant is the best way to fix the problem so the house can be built. There is really no downside as the house is within all the other appropriate setbacks and height restriction.

Mr. Haight asked Mr. Hembree if the applicant can build the house the way he wants to but still remain within the 35 foot height restriction and Mr. Hembree reminded the Board that by granting the additional foot on the grade, the maximum height of the dwelling moves up by virtue of roof elevation. However, the house will still be 34.89 feet from the finished grade. Mr. Haight said that is acceptable to him.

Mr. Petersen said he is not going to vote in favor of the motion. There has been enough evidence provided to the Board to suggest there is an underlying water problem on the property that has not been adequately addressed. The proposed solution leaves room for the problem to worsen unless a real investigation of the water source is conducted. He does not believe all alternatives have been pursued.

Mr. Dowler said part of the problem could be the easement and the 36 inch drainage pipe but that is not the builder's responsibility. It would need to be investigated by the Town. That is not reason enough the builder cannot build on the property. Otherwise, the property is essentially unbuildable.

Mr. Petersen agreed and said it probably is the responsibility of the Town to take charge and investigate the problem. He is not suggesting it is the sole responsibility of the builder but he thinks the builder could seek to work with the Town to resolve the situation.

Mr. Harrison said he shares the same concern that the root cause of the water problem has not been identified. He is also unhappy the applicant is coming to the Board after the fact. He is inclined to vote against the motion.

Mr. Haight said he heard the only real expert here tonight testify that he did not think the water was coming from the pipe.

Chairman Creed agreed he heard the same thing but said he is also very concerned about the infrastructure inside the easement.

Mr. Hembree said he can relay the Board's concerns to the Department of Public Works but it would have to go on a list and be prioritized. As the builder mentioned, water problems are not uncommon in the Town of Vienna. The problem is there are more issues than money. This is not something that would get solved soon. He will make sure a copy of the minutes and the Order are sent to Public Works so they know to evaluate the issue. It's important for the Board to understand that while there may very well be a drainage issue in relation to the pipe, it is not something that can be solved tonight.

Mr. Dowler said, in regards to the applicant coming to the Board after the fact, he did not get the impression it was done in bad faith. The applicant approached the Town before coming to the Board but the Board only meets once a month.

Chairman Creed asked what would happen if the vote was split and Mr. Hembree suggested taking the vote but the motion would need the majority of the members present, which is four, to pass. It just so happens the majority of the members present is also the majority of the Board.

Chairman Creed called for a vote on the motion.

Motion:	Dowler
Second:	Potter
Failed:	3-3

Aye: Potter, Haight, Dowler
Nay: Creed, Petersen, Harrison
Absent: Chumley

Chairman Creed asked how to get the Department of Public Works involved and Mr. Hembree said that would be up to the builder.

Approval of the Minutes

Mr. Petersen made a motion to approve the minutes of the February 19, 2014 meeting.

Mr. Haight seconded the motion.

Motion:	Petersen
Second:	Haight
Passed:	6-0

Absent: Chumley

Mr. Dowler mentioned he would like to tour the water tower facility and Mr. Hembree said he would mention it to the Water and Sewer Superintendent.

Mr. Petersen said maybe they could time it for when the generator is being tested.

Adjournment

Mr. Haight made a motion to adjourn the meeting at 9:50 PM.

Mr. Petersen seconded the motion.

Motion:	Haight
Second:	Petersen
Passed:	6-0

Absent: Chumley

Respectfully submitted,

Emily L. Goodman,
Clerk of the Board of Zoning Appeal